IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1613 OF 2003

IN

SUIT NO. 1542 OF 2003

Sarvesh L. Agarwal .....Plffs.
vs.
M/s. H.L Mehta and anr. .....Defnds.

R.D. Dave i/b. N.N. Vaishnawa
for the plaintiffs.
A.H. Khatri i/b. P. Mehta and Mithi
for defendant no.1.
Vinod Thaker for defendant no.2.

CORAM: S.U. KAMDAR, J.

DATE : 14th October, 2005.

P.C. :.

1. The present suit is filed by the plaintiff who is claiming to be the tenants inrespect of Room

No.4 on the properties. It is the case of the plaintiff that under an agreement dated 6.4.1992 entered into between the defendant no.1 and the plaintiff herein the plaintiff was asked to surrender his tenanted premises. In consideration he was required to hand over the suit flat. The arrangement has been arrived at in writing being Ex.A to the plaint being agreement dated 6.4.92. It is his further case that pursuant to the said agreement he has vacated the said premises and handed over vacant possession to the defendant no.1 who has in turn demolished the suit structure. It is further the case of the plaintiff that after surrender of possession of the premises the defendant no.1 has sold all right, title and interest inrespect of the said property in favour of the 2nd defendant and thus the 2nd defendant is constructing on the suit property. It is further the case of the plaintiff that the defendant no.2 is bound and liable to hand over possession of the suit flat in a newly constructed building on the terms and conditions set out in the agreement dated 6.4.92 being Ex.A to the plaint.

2. On the other hand the learned counsel for the defendant has raised preliminary objections. He has contended that the defendant no.2 has no privity of contract with the plaintiff herein. He has further contended that the right if any of the plaintiff are against the defendant no.1 and not against the 2nd defendant. He has also drawn my attention to the execution part of the agreement where the signature appears of one Mr. Karnani on behalf of the tenants inplace of Sarvesh Agarwal who is party to the said agreement. He contends that such an agreement cannot be enforced.

3. He further contends that he was unaware of any rights created by the defendant no.1 inrespect of the suit flat and he was not informed by the defendant no.1 that such an agreement has been arrived at between the plaintiff and the defendant no.1 before pertaining to the said property.

4. The third and the last contention raised by him is that the suit is barred by the law of limitation. In my opinion all the aforesaid contention raised by the defendant no.2 has no merits. Firstly the tenanted premises has been admittedly surrendered to the defendant no.1 by the plaintiff and in pursuance of the said agreement dated 6.4.92 the plaintiff has lost the said tenanted premises. Thus the plaintiff is entitled to the accommodation as agreed under the agreement dated 6.4.92. The defendant no.2 is claiming right, title and interest in the property through the 2nd defendant. Once the defendant no.2 is claiming right, title and interest through the defendant no.1 then the defendant no.2 is bound and liable inrespect of all liabilities which has been created inrespect of the suit transaction by the defendant no.1. Apart therefrom under the provisions of the Maharashtra Ownership Flats Act, 1963 the right, title and interest of the flat purchasers under the agreement is a paramount charge on the suit land and therefore also the plaintiff is entitled to the suit flat. I am also

of the opinion that the defendant no.2 ought to have investigated the claims which are already been created by the defendant no.1 before entering into an agreement and acquiring the right in the said property and thus by mere denial the defendant no.2 cannot escape the liabilities.

5. In so far as the limitation point is concerned, it has no substance because under Article 54 of the Limitation Act 1963, a cause of action to sue for specific performance arises from the date of the termination of the agreement and or from the date of performance specified in the agreement. Neither of such situation has arose in the present case and therefore the said contention has no merits.

6. I have perused the agreement. It is no doubt true that in execution clause one Mr. Karnani has signed the said agreement inplace of the tenant. However, the learned counsel for the plaintiff has produced before me a power of attorney executed by the tenant in favour of said Mr. Karnani. In the light of the aforesaid facts I am of the opinion

that the plaintiff has made out prima-facie case. There is already an ad-interim order operating in favour of the plaintiff being order dated 6.6.2003. Thereunder an injunction has been granted in favour of the plaintiff and against the the defendant in terms of prayer clause (a). For the aforesaid view taken by me, I confirm the ad-interim order dated 6.6.2003. Motion disposed off accordingly. No order as to costs.

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